ടിസ്ഥാനമായ ബീജമാകയുള്ളൂ. അതിനെ ഇടവരുത്താതിരിയ്ക്കുയാണു ജനനിയന്ത്രണപദ്ധതികൾകൊണ്ടു സാധിക്കുന്നതു്. ജനനനിയന്ത്രണമല്ല, വാസ്തവത്തിൽ ഗർഭനിയന്ത്രണമാണു് ചെയ്യുന്നതു്. ജനനിയന്ത്രണവാദികൾ ഭീരുക്കളെന്നു ഒരു മെമ്പർ ആക്ഷേപിയ്ക്കുയുണ്ടായി. മറ്റൊന്നു കുറ്റം അവരുടെ മേൽ ആരോപിച്ചാലുംഭീരുത്വക്കുറ്റം അവരിൽ ആരോപിയ്ക്കുവാൻ നിവൃത്തിയില്ല. ജനങ്ങൾക്കു് പരക്കെ നിഷിദ്ധമെന്നു ഇപ്പോൾ തോന്നുന്ന ഈ വക ആവശ്യമായ അല്പ പരിഷ്കാരങ്ങളെ ജനങ്ങളുടെ തല്പാല ബഹളവും ആക്ഷേപവും വക വെക്കാതെ പ്രചരിപ്പിയ്ക്കുവാൻ ശ്രമിയ്ക്കുന്നവർ എത്ര ചങ്കുറപ്പുള്ളവരായിരിക്കണം. അവർ ഭീരുക്കളാണെന്നു പറയുന്നവരാണു് വാസ്തവത്തിൽ ഭീരുക്കൾ. സന്താനനിയന്ത്രണത്തിനുള്ള ശ്രമങ്ങൾ പണ്ടും ഉണ്ടായിരുന്നു. ഇപ്പോഴത്തെ മാർഗ്ഗങ്ങളിൽ കൂടിയല്ലെന്നേയുള്ളൂ. സന്താനനിയന്ത്രണം അസാന്മാർഗ്ഗികമെന്നു പറയുന്നതു സന്മാർഗ്ഗം എപ്പോഴും അപേക്ഷികമാണെന്നും, അതു കാലദേശഭേദമനുസരിച്ചു മാറിക്കൊണ്ടിരിയ്ക്കുന്നു എന്നുമുള്ള സംഗതി ഓർക്കാഞ്ഞിട്ടാണ". ഞാൻ ഇപ്പോൾ ഈ നിശ്ചയം പ്രസ്താവിക്കുന്നില്ല.

22. Bifurcation of the College.

Deputy President.—The next resolution is the one standing in the name of Mr. A. Eachara Menon.

The followeng resolution of Mr. A. Eachara Menon was not moved and hence it was considered withdrawn.

Mr. A. Eachara Menon:—"*That this Council recommends to the Government that a College of Science be located at Anappara like some of the Sister Native States dissociated from the Arts College*".

23. Capital Punishment.

Deputy President.—The next resolution is the one standing in the name of Mr. Kumaran Ezhuthassan.

Mr. P. Kumaran Ezhuthassan.—Sir, the Resolution that I want to place before this House is:—"It is Council recommends to the Government thet Capital Punishment be abolished in the State". This is a resolution which does not require any speech at my hands. I shall just make one or two statements as expressed by eminent men who have spent a thought over the subject. Capital punishment is considered by all civilized countries as a relic of barbarism. It has been abolished in a good many of the civilised countries of the world. This punishment of extreme penalty, namely, death loses sight of one of the most important objects of punishment namely the reformatory side of it. Again as far as the murderer is concerned, it is no punishment to him, but it is really a punishment to his innocent relatives. Then

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again in a case of error of judgment, it becomes an irrevocable penalty. Our Judges are only human beings. They may go wrong. And if ultimately they find they have really gone wrong they are helpless. There is equally, if not more, efficacious punishment in a long term imprisonment which, if had under improved conditions, will even be a source of improving the murderer. For these reasons, I would place this resolution before this House and simply be satisfied by saying that in considering this resolution, the Hon'ble Members may not be moved by considerations of siding with the present administration or the last administration and I may add that I also request that the Government may not as on a previous occasion when such a resolution was being discussed give its opinion as to what really they intend doing in the matter. On a former occasion, I remember when the same resolution was being discussed, the Hon'ble Member for Law got up and said that such and such is the view of the Government. When such a statement is made I am afraid, from certain statements made by some Hon'ble Members 2 or 3 days back, that opinion may probably change with regard to some section of the non-officials. I request the Government not to take up that attitude. Let the non-official Members decide it for themselves irrespective of the Government view. Of course, I know that this resolution by itself has not the effect of doing away with capital punishment all at once. Legislation will have to be undertaken. That may be undertaken by the Government. In that case, it will strengthen the hands of the Government. Or it may be undertaken through a Bill by the non-officials. In that case this discussion will show which way the wind blows. So I will place this resolution before the House and request them to consider it dispassionately. The reason that prompted me to bring this resolution before this House is only this. That when a good many of the civilised countries, have found their way to do away with capital punishment and they are not the worse for it, enlightened Cochin cannot sit quiet and allow this barbarous thing to be in its statute book. That is the reason which prompted me to place this resolution before this House. I commend the resolution for the acceptance of this House.

Mr. T. K. Nayar.—I second it.

Deputy President.—Any Member to speak on the subject.

Mr. K. Achyuta Menon.—I rise to oppose this motion. I am sure that if the Government can speak the voice of reason, that will be accepted by the non-official members of this Council. The Government have no desire to under rate the importance of this subject which I may say is the problem of the hour, so far

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as penal law is concerned. Nor has the Government any idea of questioning the propriety of endeavouring to impress upon the Government considerations such as those that were adverted to by the Hon'ble Member for Mulakunnathukavu. The Government are desirous of impressing upon this House that it does not want to approach this subject with a sense of indifference. A careful scrutiny of the rather copious and detailed literature that has grown round the subject will convince every impartial member of this House that there is a deep clear cut divergence of views on this subject (*Hear, hear*). There is a large body of enlightened opinion which stands for abolition of this punishment. There is an equally large amount of authoritative and respectable opinion juristic as well as judicial, which says that the time has not come for taking this provision out of the Statute Book. While the experts are disagreed, while there is diversity of legal opinion on this matter, the position of any Government ought to be clear and, so far as the present Government is concerned, it is clear It is a well established principle of legislative ethics or administrative ethics or you may call it a cannon of legislation that no change in an existing enactment is effected unless the necessity for that change is made out by what we lawyers call clear, convincing and cogent evidence. Unless you can point out to a concensus of legal opinion or what I may put as a preponderance of authority in favour of this change which will indicate to the Government that the existing enactment is repudiated and condemned by the entire moral conciousness of a particular generation, legistative wisdom is never interfered with. I am sure, Hon'ble Members will not, considering the gravity of the change that is advocated and the consequences that are likely to ensue, press upon the Government the necessity for a change in the existing enactment. Government is familiar with all the arguments that are usually advanced on either side in this matter. You will find the pages of the Criminal Law Journal teem with articles in this matter. The Hon'ble Member for Mulakunnathukavu has summarised all the arguments of these articles for abolition. You will however find in these articles all these arguments met on the other side by equally competent authorities. He referred to the 'irrevocable doom' the unwisdom of entrusting Judges with such power. Those are Lord Shaw's words. You will find the Hon'ble Member for Cheruviratti in possession of the book (which is mine) where Lord Shaw is opposed by an equally eminent Judge Lord Eldon who says that such an enactment ought to be there for the existence of society. He said that the object of all punishment is reform. Quite right.

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But he is looking at the thing from the standpoint of the man. I admit that there is no use of hanging a man and then trying to reform him. But he forgets another essential point. The standpoint that ought to be taken is not that of the individual, for it is an elementary proposition of criminal law that the man who has done wrong injures society and when you launch a man into the merciful waters of oblivion for the highest crime that is in the Penal Code the underlying principle is that the society is wronged and the existence of the society and the preservation of order require that the highest form of punishment ought to be given to him. I am also aware that the advocates for abolition rely very largely upon statistics; but statistics you will allow me to state is like the Grecian Syrens of old alluring but deceptive, and the weapon which the people who vote against it, use is also 'statistics'. They point to the fact that the countries which have abolished capital punishment have been the first to restore it to the Statute Book.

Dr. A. R. Menon.—Which one ?

Mr. K. Achyuta Menon.—I will refer to two learned articles, 10 Criminal Law Journal and 12 Criminal Law Journal for the Hon'ble Member's information. The countries are given there.

Dr. A. R. Menon.—I shall find it from your almirah.

Mr. K. Achyuta Menon.—This is a great question. The great difficulty which legislators find in accepting the suggestion for the abolition of capital punishment is the formidable obstacle of trying to find out a substitute. The long term imprisonment advocated by the mover, has been found to be an ineffective remedy. I don't think there is any useful purpose served by sending a man to the pleasant seclusion of our Jails. Granted that the highest form of punishment should be given to the highest form of crime, the practical difficulty before the Government is to regrade the punishment which is existing in our Statute Book. I impress upon the Hon'ble Members the practical difficulty of revising and regrading the entire system of punishment. It will be obviously an anomaly, a very big anomaly to give a life term imprisonment for murder when you find the Statute Book gives it for being a Thug. There are others also for which this form of punishment is provided. Therefore an entire revision in the punishment is necessary and unless the Hon'ble Member will place the Government in possession of a scheme for regarding the punishment, to make it commensurate with the quality of the offence, and unless the whole thing is revised the anomaly would subsist. Unless therefore, the Government is convinced of the necessity for the change by the existence of decided opinion for the change, it is

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hazardous in the highest degree to experiment upon such a vital matter. I may also point out to the Hon'ble Members of this House that the question came up before this House once before in a resolution which the Hon'ble Member for Nellayi moved and it is reported in the proceedings of 1929 that all the Members of this House or most of the Members did take part in a full-dress discussion on that day and the diversity of opinion which we find reflected to-day was reflected also in the Council Hall then, the votes being 12 for and 24 against, including the officials. The non-officials were absolutely equally divided on that occasion. I do not wish to deal very much more on this matter, but I would finally wind up by saying that it will be obviously hard and impracticable to ask the Government to adopt this resolution and to request the Government to forego the sure anchorage of a dependable rule in favour of another, however sentimentally attractive it may be.

Deputy President.—Any body to speak ?

Dr. A. R. Menon.—Sir, I have never been more surprised in my life than I was when I heard the arguments advanced by the Government Advocate in opposing this resolution. I would at the very outset warn this House that of all the people the most incompetent and unreliable to offer advice on a subject like this are the very people who participate in these horrors, namely the Judges, the lawyers and the executioner. You will find that in all the Legislative Council debates upon this subject the prominent part played by the legal profession has been to oppose this measure. What value should be attached to their opinion is a matter for you to decide. They have been accustomed to a legal system and they think that system is efficacious enough to protect life and property. In spite of all the hangings they have resorted to for centuries, the crime of murder seems to persist still. If the hanging does produce a deterrent effect upon the public, you must be in a position to show the result the only reasonable argument in favour of hanging which can only be done by statistics. Anticipating this move that we might take, the learned Advocate says, "Don't look as statistics. Statistics are alluring. They are misleading. They are no good." That is the argument that he has advanced. He knows in his heart of hearts that, in a matter like this, statistics is the very thing that would either prove or disprove the case. Now, after having shut out that one clear method, he proceeds in a very jovial manner and indulges in fine phrases and beautiful expressions as though hanging is a subject which tickles his sense of humour and stimulates his latent literary talents. The business is so heinous that the Government of Cochin have shown their aversion to it by their reluctance to carry out this form of punishment. Will

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you tell me the number of people charged with murder and the actual number of culprits that were hanged within the last 20 years. You will find nearly 80 to 90 per cent of those convicted of murder were let off with a long term of imprisonment and the pity of it is that the Judges were put to great trouble for finding out some extenuating circumstances, because it is essential according to your Code of Law that there must be some extenuating circumstances that the supreme penalty of law may not be enforced. That has been the mental attitude of the Judges in this State. What does it indicate? It indicates that Judges have no great belief in your argument of deterrent effect and naturally have a feeling of aversion against a useless form of punishment which only helps in brutalising people. That is the reason. A notable fact which emerges from the reports of the evidence given before the Select Committee on capital punishment, is that in all those countries—mark you—where the extreme penalty of death has been abolished, a decrease in the number of murders is seen. Now you see the reason why the learned Advocate advises you not to look into the statistics. This fact would have very little significance if it related only to one country, but when a similar experience is noted in more than one country, it would seem that there must be some explanation for it. "That the effect of the State so respecting life as to refuse to take it would undoubtedly be greater than the effect of its so condemning murder as to take the life of the murderer. The reaction of the individual after he had committed a crime is so largely imitative rather than argumentative with the fact of taking life at once as to lower the general conception of the sanctity of life." I shall read another quotation, "Capital punishment has already been abolished in numerous countries and apparently with beneficial effect as regards crime." In fact it remains here only as a tradition from the time a hundred years ago when practically every crime was capital and all eminent authorities, including Lord Elden said any relaxation would destroy the security of life and property. At that time hundreds of crimes were liable to be punished with death and the great Lord Elden and his associates opposed to the reduction in any of these 100 and odd cases. Yet the society lives. The conclusive reason is that, as Lord Shaw says, "every human judgment is mingled with human error and in the issues of life and death, no judge should be charged with an irrevocable doom." Now, Sir, the point is this. Lord Eldon, whom my Hon'ble friend has quoted with approval advocated hanging not only for murder, but for a series of crimes. Almost every one of that crime can be committed now without the criminal being hanged at the end of a rope. Still society lives to-day, in spite of Lord Eldon's dictum that hanging for stealing a loaf of bread is essential for protection and continuation of society. But there is another point beside all this. If you cannot prove by statistics

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that hanging has a deterrent effect and if you still claim that hanging has a deterrent effect you would be well advised in hanging people in public. You cannot produce a deterrent effect by simply hanging a man, in a dark room, and publishing the same afterwards. You know the moral consciousness of the people will resent such an inhuman and brutal practice. Hence you take the murderer coolly into a room and strangle him to death, privately, fearing the public clamour that will be raised if done openly. What is the use of saying that it has a deterrent effect? To produce a daterrent effect you must do it publicly. If you are for it, do it before the public. As I have said, no lawyer, no judge who had been accustomed to these methods of dealing out justice will ever be in favour of this Resolution, because they are Hon'ble men and they honestly think that these methods are efficacious. Otherwise they would not have resorted to them. It is for us to form an independent judgment without their help in this matter. Professional men are generally conservative in their tendency and they do not want to depart from their accustomed groove. Similarly judges and lawyers are not easily moved from the position they have taken. Therefore, I would advise the Members of this House to form an independent judgment without them. Do you not realise the effect of passing a Resolution like this? You may say it is only a small State. Execution is very rare here, indeed. But a good example set in a corner of India will produce a beneficient effect in other parts of this sub-continent. Because the consciousness of the general public and the profound sense of humanity which constitutes the core of modern civilization alike condemn this brutal method of punishment, it behoves us all to accept this resolution.

മിസ്റ്റർ കെ. അയ്യപ്പൻ Law member.—ഈ നിശ്ചയത്തെ അനുകൂലിച്ചുകൊണ്ടു ഞാനും അനുകൂലിക്കുന്നു. അദ്ദേഹം (not yet time) എന്നു പറയുന്നുള്ളൂ. അദ്ദേഹത്തിന്റെ പ്രസംഗത്തിന്റെ സാരമായിട്ടുള്ള സംഗതി കാലമായിട്ടില്ല എന്നുള്ളതാണ് ഇത് ആവശ്യമാണെന്നു അദ്ദേഹം സമ്മതിക്കുന്നു. അതു (report)ൽ കണ്ടില്ലെന്നു വന്നേക്കാം. അദ്ദേഹത്തിനു ഒരു (difficulty) മാത്രമെയുള്ളൂ; അതു (selfish difficulty) യുമാണ്. (Criminal law) മുഴുവനും (over haul) ചെയ്യുവാനുള്ളവിഷമമാണ് അദ്ദേഹത്തെ തടയുന്നതു്. എങ്കിലും അദ്ദേഹം ഇതിനനുകൂലിയാണെന്നു തെളിയുന്നുണ്ടു. ചെറുശ്ശേരി മെംബർ പറഞ്ഞ ഒരു സംഗതി ഞാൻ എടുത്തു പറയുന്നു. ഒരു (society) യുടെ ഗുണത്തിനായി ഒരാളെ കൊല്ലുമെങ്കിൽ (political terrorism) നാം അനുവദിക്കേണ്ടതായിട്ടു വരും. (Statistics) നോക്കിയാലും വധശിക്ഷ നിർത്തിയതു

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കൊണ്ട കൊലപാതകം കുറഞ്ഞതായിട്ടാണ് കാണുന്നത്. മറിച്ച കുറെയെങ്കിലും ദുഷ്ടാന്തങ്ങളുണ്ടായിരുന്നെങ്കിൽ വധശിക്ഷയേ ണമെന്നു ശഠിക്കാമായിരുന്നു. അതില്ല. അതുകൊണ്ട ഞാൻ ഇ തിനെ അനുകൂലിക്കുന്നു.

Deputy President.—Do you want to reply? Only one minute more.

Mr. P. Kumaran Ezhuthassan.—I shall better do it to-morrow.

Deputy President.—We shall meet to-morrow. We will now adjourn.

The House rose for the day at 5 p. m.

C. J. MATHEW,

Secretary to the Council.

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